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Supreme Court, U.S.
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No. 06-1593

In the Supreme Court of the United States

RICHARD M. COWETT, M.D.
Petitioner,

v.

TCH PEDIATRICS, INC., et al.,
Respondents.

On Petition for a Writ of Certiorari to the State of Ohio, Mahoning County Court of Appeals, Seventh District

RESPONDENTS' BRIEF IN OPPOSITION

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July 2, 2007

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STATEMENT PURSUANT TO RULE 29.6

Respondent TCH Pediatrics, Inc. is a privately held for-profit corporation. Respondent Tod Children's Hospital is a division of the Western Reserve Care System. Respondent Western Reserve Care System is a not-for-profit hospital. Respondent Forum Health is the parent corporation of TCH Pediatrics, Inc. and Western Reserve Care System.

TABLE OF CONTENTS

STATEMENT PURSUANT TO RULE 29.6 i

TABLE OF CITED AUTHORITIES iii

STATEMENT OF THE CASE 1

STATEMENT OF THE FACTS 1

SUMMARY OF THE ARGUMENT 6

REASONS FOR DENYING THE WRIT 7

TABLE OF CITED AUTHORITIES

Cases

Austin v. McNamara,
979 F.2d 728 (9th Cir. 1992) 12

Bender v. Suburban Hosp.,
134 Md. App. 7 (2000) 14, 15

Benjamin v. Aroostook Medical Ctr.,
937 F. Supp. 957 (D. Me. 1996) 11

Brader v. Allegheny Gen'l Hosp.,
167 F.3d 832 (3d Cir. 1999) 12

Bryan v. James E. Holmes Regional Medical Center,
33 F.3d 1318 (11th Cir. 1994) 11, 12

Burney v. East Ala. Medical Ctr.,
939 F. Supp. 1514 (M.D. Ala. 1996) 11

Chalal v. Northwest Med. Ctr., Inc.,
147 F. Supp. 2d 1160 (N.D. Ala. 2000) 8, 11

Egan v. Athol Mem. Hosp.,
971 F. Supp. 37 (D. Mass. 1997) 11

Fox v. Parma Community General Hospital,
160 Ohio App. 3d 409 (2005) 11, 12, 13

Gabaldoni v. Wash. County Hosp. Ass'n,
250 F.3d 255 (4th Cir. 2001) 11

Lee v. Trinity Lutheran Hosp.,
408 F.3d 1064 (8th Cir. 2005) 12

Manzetti v. Mercy Hosp. of Pittsburgh,
741 A.2d 827 (Pa. Commw. 1999) 12

McLeay v. Bergan Mercy Health Sys. Corp.,
271 Neb. 602, 714 N.W.2d 7 12

Meyer v. Sunrise Hosp.,
117 Nev. 313 (2001) 12

Meyers, M.D. v. Columbia/HCA Health Care Corp.,
341 F.3d 461 (C.A. 6, 2003) 9, 13

Misischia v. St. John's Mercy Med. Ctr.,
30 S.W.3d 848 (2000) 12

N. Colo. Med. Ctr. v. Nicholas, 27 P.3d 828 (2001) . . 12

Onel v. Tenet Healthsystems,
2003 U.S. Dist. LEXIS 20071 (E.D. La. 2003) . . . 11

Quartemont v. St. Joseph Hosp. & Health Ctr.,
1995 U.S. Dist. LEXIS 14160 (S.D. Tx. 1995) . . . 12

Rogers v. Columbia/HCA,
971 F. Supp. 229 (W.D. La. 1997) 11

Sklaroff v. Allegheny Health Educ. Research Found.,
1996 U.S. Dist. LEXIS 9484 (E.D. Pa. 1996) 12

Sugarbaker v. SSM Health Care,
190 F.3d 905 (C.A.8, 1999) 12, 13

Taylor v. Kennestone Hosp., Inc.,
266 Ga. App. 14 (2004) 12

Statutes

42 U.S.C. § 11101, et seq. 1

42 U.S.C. § 11101(1) 9

42 U.S.C. § 11111(a) 9, 10

42 U.S.C. § 11133(a)(1)(A) 6

Ohio Revised Code § 2305.25, et seq 1, 16

Ohio Revised Code § 2305.251 10

STATEMENT OF THE CASE

Petitioner Richard M. Cowett, M.D. ("Dr. Cowett") filed his Complaint in the Mahoning County (Ohio) Court of Common Pleas on August 16, 2002, asserting claims under Ohio common law for breach of contract, breach of the WRCS bylaws, and tortious interference with an employment relationship. Dr. Cowett asserted no federal claims. Respondents' Answer invoked the immunity provided by the Health Care Quality Improvement Act, 42 U.S.C. §11101, et seq. ("HCQIA") and Ohio Revised Code § 2305.25, et seq.

Respondents filed their Motion for Summary Judgment on all of Dr. Cowett's claims on February 26, 2004. Dr. Cowett responded on January 31, 2005. Although initially denying judgment in favor of Respondents, pursuant to Respondents' motion for reconsideration based upon a newly reported Ohio Court of Appeals decision as to the scope of HCQIA immunity, the common pleas court reversed its earlier ruling and entered judgment in favor of Respondents. Dr. Cowett timely appealed and on September 27, 2006 the Seventh District (Ohio) Court of Appeals issued its decision which affirmed the grant of summary judgment to Respondents on the grounds of immunity under HCQIA and Ohio Revised Code § 2305.25, et seq. The Supreme Court of Ohio declined jurisdiction on February 28, 2007.

STATEMENT OF THE FACTS

As has been the pattern throughout this case, Dr. Cowett has grossly misconstrued (at times, misrepresented) the facts of this case and omits two crucial areas of factual background which have formed the basis of court rulings below – 1) the failure by Dr. Cowett to provide adequate care to three severely compromised newborn infants whose conditions were

traced directly back to Dr. Cowett's incompetence, and 2) the copious due process Dr. Cowett received, which resulted in every physician and nonphysician who reviewed this case supporting the revocation of Dr. Cowett's privileges. Every individual, panel, board, and court that has reviewed this matter has found in favor of Respondents' position. Not one has ever found in favor of Dr. Cowett, and for him to ascribe some political motivation to the revocation of his privileges continues to ring hollow. The action taken against Dr. Cowett was entirely about the furtherance of quality health care and his continued insistence that he was an obstacle to some unarticulated political agenda of an outside entity reeks of hubris. Respondents put forth the following statement of facts and, in so doing, object to the factual recitation of Dr. Cowett in its entirety.

Dr. Cowett was first appointed to Western Reserve Care System's (WRCS) Professional Staff on August 1, 2001 as a member of the Department of Pediatrics & Adolescent Medicine in the Division of Neonatology, entering into a written contract to be the Director of the Division of Neonatology at Tod Children's Hospital (TCH). As part of his duties, Dr. Cowett was required to provide direct clinical care to newborn infants in the Special Care Nursery (SCN) at TCH.

On September 21, 2001, approximately a month and a half after Dr. Cowett assumed his position, Natalie Yeaney, M.D., a fellow staff neonatologist at WRCS, voiced concerns to the Chair of the Department of Pediatrics, Dr. Felter, about Dr. Cowett's professional competence with respect to his care of two critically ill infants. In response to Dr. Yeaney's concerns, Dr. Felter asked a senior WRCS board-certified neonatologist, Kurt Wegner, M.D., to perform a summary review of the charts for those two babies. Dr.

Feltner also interviewed witnesses to Dr. Cowett's performance, witnesses who expressed their own independent concerns about Dr. Cowett's clinical skills. After Dr. Wegner completed his review, he reported to Dr. Felter that there was cause to investigate Dr. Cowett further.

On October 4, 2001, Dr. Felter was informed about additional professional competence concerns as to the care Dr. Cowett had recently provided to a third baby. Dr. Felter was understandably alarmed by the third such incident in less than two weeks. Dr. Felter interviewed nursing and other medical staff involved in the care of this third infant, and subsequently interviewed Dr. Cowett about his actions for two hours on October 4, 2001. As a result of the information he gathered, and based on the gravity of the matter, Dr. Felter temporarily relieved Dr. Cowett of his clinical duties in the SCN while a departmental inquiry was conducted to determine if the circumstances merited Corrective Action under WRCS's Bylaws.

Dr. Felter met with Dr. Cowett again the next day, this time with the Vice Chairman of the Pediatrics Department, Robert Venglarcik, M.D. At that time, Dr. Cowett admitted that he ordered an inappropriately high setting on the ventilator for one of the three infants. Dr. Cowett also admitted that he failed to personally review bowel x-rays for a second infant for several hours while the infant's condition noticeably deteriorated. As a result, that baby needed emergency surgery.

Thereafter, several physicians and other clinicians were interviewed about Dr. Cowett's professional conduct. Dr. Wegner performed a more detailed review of the medical charts for the three babies. Dr. Wegner assisted Dr. Felter in preparing a report containing his findings. Additional

information was provided by interviews conducted by Michael Keating, the Hospital's Risk Manager.

Dr. Felter and Dr. Wegner interviewed Dr. Cowett yet another time on October 15, 2001, this time for an additional two hours. At that time, Dr. Cowett again admitted his errors regarding the ventilator for one baby, and the x-rays for a second. He also admitted he had failed to repeat a suspicious hematocrit test for the third infant, even though there was evidence indicating that baby's hematocrit level was dangerously high.

Dr. Felter completed the written departmental investigation report concerning Dr. Cowett on October 17, 2001. That report was based on chart reviews, and multiple interviews with physicians and other direct care providers, including those with Dr. Cowett himself. On the basis of this report, Dr. Felter requested in writing on October 19, 2001 that WRCS's Vice President of Medical Affairs initiate Corrective Action under the Bylaws against Dr. Cowett. The first step in that process was a review by WRCS's Professional Executive Committee (the "PEC"), comprised of twelve physicians, to determine if the matter should proceed any further.

The PEC convened a special meeting on October 23, 2001 to discuss that request. Dr. Felter presented his findings, and the medical evidence supporting those findings. The twelve physicians comprising the PEC voted unanimously to recommend revocation of Dr. Cowett's privileges. The Vice President of Medical Affairs then triggered Dr. Cowett's hearing rights under WRCS's Bylaws by furnishing him with a written notice of the PEC's recommendation by a letter dated October 26, 2001. That written notice specified the basis for the PEC's recommendation.

The PEC formally suspended Dr. Cowett's privileges during the pendency of the Corrective Action, which automatically required termination of Dr. Cowett's employment under his written contract with TCH Pediatrics, Inc. Dr. Cowett then requested and received a hearing as afforded by the WRCS Bylaws.

Prior to the hearing, Dr. Cowett was provided a huge quantity of documents that included the medical charts for the three infants in question, as well as Dr. Felter's report containing the findings of his departmental investigation. The hearing was conducted with Dr. Cowett's consent on March 6, 2002 and March 13, 2002 before a Hearing Panel comprised of three physicians from WRCS's Professional Staff. Dr. Cowett presented witnesses on his behalf (including his own designated experts) who were examined by his attorney. Dr. Cowett's counsel cross-examined each of the witnesses presented by the PEC. Both sides presented to the three-physician Hearing Panel large volumes of medical records, other exhibits, and testimony from a number of witnesses. The Hearing Panel members also examined witnesses throughout the proceedings.

The Hearing Panel issued its written report on March 20, 2002. The Panel concluded from its review of the evidence that Dr. Cowett failed to provide appropriate care, and made that finding specifically as to Dr. Cowett's management of the care for the three infants at issue. The Hearing Panel unanimously recommended the affirmance of the PEC's recommendation to revoke Dr. Cowett's privileges.

The PEC (consistent with the Bylaws) thereafter reviewed that recommendation and — this time with fourteen (14) physician members unanimously voting — made its final recommendation to revoke Dr. Cowett's privileges. Dr.

Cowett was provided with a copy of the Hearing Panel's report and the PEC's final recommendation and he requested the appeal afforded by the WRCS Bylaws to WRCS's Board of Trustees.

In that appeal, Dr. Cowett made an extensive presentation to the WRCS Board of Trustees' Ad Hoc Appellate Review Committee, which also included physicians as its members. That Committee subsequently made a report to the full Board, which voted on June 19, 2002 to accept the PEC's recommendation of privilege revocation. Dr. Cowett received written notification of this action.

The letter's return receipt, received by WRCS on August 5, 2002 established Dr. Cowett's notice of the Board's final decision, triggering the mandatory requirement to make a report to the National Practitioner Data Bank (NPDB). 42 U.S.C. §11133(a)(1)(A). WRCS made its required report to the NPDB on August 20, 2002 and disclosed that Dr. Cowett's privileges had been revoked because of clinical care issues involving those three babies. Dr. Cowett filed his response with the NPDB on August 28, 2002. This action thereafter resulted. All of Dr. Cowett's claims were based upon the professional review action taken by the PEC, the Hearing Panel, and WRCS's Board of Trustees.

SUMMARY OF THE ARGUMENT

A review of Dr. Cowett's Petition reveals that he offers virtually no support for his extraordinary argument that this Court must change accepted and settled interpretation – both statutory and judicial – of the Health Care Quality Improvement Act (HCQIA) simply so that he might have some chance to prevail in this case. Dr. Cowett in essence asks this Court to disregard settled precedent (both federal

and Ohio, which the Ohio courts that reviewed this case were required to consider) and craft law that vindicates his dangerous incompetence rather than uphold the language, intent, and policy behind HCQIA – the furtherance of quality health care and the protection of those who seek medical attention.

During his short, yet disastrous, tenure in caring for infants at WRCS, Dr. Cowett dangerously compromised the health of multiple infants whose conditions were traced back to his substandard care. Literally dozens of physicians and other professionals examined this case from the moment the first issue was brought to the attention of the Chair of the Department of Pediatrics through the affirmance by the WRCS Board of Trustees of the decision to revoke Dr. Cowett's privileges. Those dozens of professionals unanimously agreed to the revocation of his privileges at the hospital. While Dr. Cowett attempts to dredge up a tired and repeatedly rejected conspiracy theory, he cannot credibly deny that. The furtherance of quality health care prompted, sustained, and was in fact the sole basis for the inquiry that led to that revocation of his privileges.

In short, Dr. Cowett has offered no basis beyond his own selfish motives for this Court to accept certiorari in this case. He has pointed to no real conflict, and indeed, has offered this Court virtually no legal basis on which to even evaluate his arguments. As such, this Court need not accept certiorari. Respondents, therefore, respectfully request that this Court DENY Dr. Cowett's Petition.

REASONS FOR DENYING THE WRIT

Again, it must be mentioned that Dr. Cowett virtually ignores the quality of care issues that brought the Corrective

Action now at issue into existence in the first place. Instead, he tries to perpetuate his "conspiracy theory," which every court that has evaluated his claim has rejected.[1] There is no reason for this Court not to also reject that theory. The standard for summary judgment consistently developed and approved by courts throughout this country when interpreting HCQIA is the appropriate one, and indeed, Dr. Cowett puts forth no valid citation for his own proposition.

Unsurprisingly, Dr. Cowett was not pleased with the outcome of the peer review process that revoked his privileges at WRCS and caused an adverse report to be made to the NPDB. However, a physician who simply disagrees with or dislikes the outcome of a peer review hearing must not and cannot be permitted to relitigate the hearing process before the courts in the hope that the court might substitute its judgment for that of the hospital. To do so would to defeat the explicit purpose of both federal and state law. See Chalal v. Northwest Med. Ctr., Inc., 147 F. Supp. 2d 1160, 1184 (N.D. Ala. 2000). There, the court put it most aptly:

> Plaintiff's prosecution of this lawsuit was a plain attempt to have a court revisit an adverse decision of his medical colleagues and substitute the court's judgment for that of the Hospital's governing board. This is precisely the type of litigation the Health Care Quality Improvement Act was designed to prevent.

Id.

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[1] Indeed, it was never raised during the administrative proceedings which resulted in the revocation of Dr. Cowett's privileges.

Congress adopted the Health Care Quality Improvement Act (HCQIA) in 1986 in response to the "increasing occurrence of medical malpractice and the need to improve the quality of medical care" in the United States. 42 U.S.C. § 11101(1). The purpose of the statute is to provide for effective peer review and interstate monitoring of incompetent physicians, such as Dr. Cowett. Id. See also, Meyers, M.D. v. Columbia/HCA Health Care Corp., 341 F.3d 461 (C.A. 6, 2003). HCQIA provides explicitly that:

> If a professional review action . . . of a professional review body meets all the standards specified in section 11112(a) of this title [the professional review body and all participants therein] shall not be liable in damages under any law of the United States or any State.

42 U.S.C. § 11111(a). In furtherance of this goal, HCQIA grants immunity from actions for damages to participants in medical-peer-review activities. Far from the "limited immunity" that Dr. Cowett attempts to characterize, HCQIA immunity is comprehensive. See 42 U.S.C. § 11111(a). That is, HCQIA provides that a "professional review body" taking a "professional review action" "shall not be liable in damages under any law of the United States or of any State * * * with

respect to the action." 42 U.S.C. § 11112(a).[2] Specifically, this section affords a presumption of immunity:

> A professional review action shall be presumed to have met the preceding standards [reasonable belief, reasonable effort, adequate notice and hearing procedures, and reasonable belief that action warranted by the facts] necessary for the protection set out in section 11111(a) of this title unless the presumption is rebutted by a preponderance of the evidence.[3]

42 U.S.C. § 11111(a).

In light of the above comprehensive statutory protection, and in light of Dr. Cowett's failure to show otherwise, the trial court correctly granted summary judgment to WRCS and its related entities, finding that all were immune from all of Dr. Cowett's claims against them.

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[2] Ohio law contains a similar immunity, application of which dictates the same result here. The Ohio Revised Code provides that "no health care entity shall be liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the functions of a peer review committee of the health care entity. No individual who is a member of or works for or on behalf of a peer review committee of a health care entity shall be liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the function of the peer review committee." Ohio Revised Code § 2305.251. Respondents invoked this immunity provision as well, which also bars all of Dr. Cowett's claims.

[3] Dr. Cowett has never challenged the characterization of the WRCS proceedings as a "professional review action."

Judicial review of peer review actions such as the one at issue here are routinely disposed of by summary judgment. Indeed, three days after the trial court initially denied summary judgment in this case, another Ohio appellate court, the Eighth District (Ohio) Court of Appeals, decided the case of Fox v. Parma Community General Hospital, 160 Ohio App. 3d 409 (2005), which affirmed a grant of summary judgment in favor of a hospital defendant which had invoked HCQIA. The Seventh District Court of Appeals was entitled to rely on that case as persuasive authority in making its own decision.

It cannot be reasonably disputed that the question of HCQIA immunity is a question of law for the court to decide, as the courts in this case also decided. Bryan v. James E. Holmes Regional Medical Center, 33 F.3d 1318 (11th Cir. 1994), sets forth that widely accepted standard:

> HCQIA immunity is a question of law for the court to decide and may be resolved whenever the record in a particular case becomes sufficiently developed. ... Under no circumstances should the ultimate question of whether the defendant is immune from monetary liability under HCQIA be submitted to the jury.

Bryan, 33 F.3d at 1332-1333. This fundamental interpretation of HCQIA is well accepted. See (all citing Bryan): Gabaldoni v. Wash. County Hosp. Ass'n, 250 F.3d 255 (4th Cir. 2001); Onel v. Tenet Healthsystems, 2003 U.S. Dist. LEXIS 20071 (E.D. La. 2003); Chalal v. Northwest Med. Ctr., Inc., 147 F. Supp. 2d 1160 (N.D. Ala. 2000); Rogers v. Columbia/HCA, 971 F. Supp. 229 (W.D. La. 1997); Egan v. Athol Mem. Hosp., 971 F. Supp. 37 (D. Mass. 1997); Burney v. East Ala. Medical Ctr., 939 F. Supp. 1514 (M.D. Ala. 1996); Benjamin v. Aroostook Medical

Ctr., 937 F. Supp. 957 (D. Me. 1996); Sklaroff v. Allegheny Health Educ. Research Found., 1996 U.S. Dist. LEXIS 9484 (E.D. Pa. 1996); Quartemont v. St. Joseph Hosp. & Health Ctr., 1995 U.S. Dist. LEXIS 14160 (S.D. Tx. 1995); N. Colo. Med. Ctr. v. Nicholas, 27 P.3d 828 (2001); Taylor v. Kennestone Hosp., Inc., 266 Ga. App. 14 (2004); Misischia v. St. John's Mercy Med. Ctr., 30 S.W.3d 848 (2000); Meyer v. Sunrise Hosp., 117 Nev. 313 (2001); Manzetti v. Mercy Hosp., 741 A.2d 827 (1999).

As noted above, the presumed satisfaction of the four due process requirements contained in HCQIA creates a rebuttable presumption of immunity, that is, a peer review action is presumed to have met the statute's standards (and thus, confers immunity) unless the affected physician rebuts that presumption by a preponderance of the evidence. This rebuttable presumption creates an unusual standard for summary judgment, which courts have uniformly utilized and affirmed: might a reasonable jury, viewing the facts in the best light for the plaintiff, conclude that he has demonstrated by a preponderance of the evidence that the defendant's actions fell outside the scope of Section 11112(a)? Put another way, the presumption language in HCQIA means that the plaintiff bears the burden of proving that the peer review process was not reasonable. Bryan, supra. A court must determine whether the physician plaintiff satisfied his or her burden of producing evidence that the hospital's peer review process failed to meet the standards of HCQIA. See, e.g., Lee v. Trinity Lutheran Hosp., 408 F.3d 1064 (8th Cir. 2005); Brader v. Allegheny Gen'l Hosp., 167 F.3d 832 (3d Cir. 1999); Bryan, supra; Austin v. McNamara, 979 F.2d 728 (9th Cir. 1992); McLeay v. Bergan Mercy Health Sys. Corp., 271 Neb. 602, 714 N.W.2d 7; Fox, supra; Manzetti v. Mercy Hosp. of Pittsburgh, 741 A.2d 827 (Pa. Commw. 1999).

This requirement - that the peer review procedure be undertaken in the furtherance of quality health care - is an objective inquiry. See Fox, 160 Ohio App.3d at 416, 827 N.E.2d 787. Thus, "any purported bad faith or malice on the part of the defendants is immaterial. Fox, 160 Ohio App.3d at 417, 827 N.E.2d 787; Meyers, M.D., supra, at 468; Sugarbaker v. SSM Health Care, 190 F.3d 905, 914 (C.A.8, 1999) (stating that "the subjective bias or bad faith motives of the peer reviewers is irrelevant").

The standard is satisfied by evidence showing that those conducting the professional review could reasonably have concluded their action would restrict incompetent behavior or protect patients based on the information available to them at the time of the review. Meyers, M.D., supra. The focus in determining whether the professional peer review body's actions were reasonable is not whether each of the complaints against the professional were undisputedly true, but whether those conducting the review acted reasonably in considering and relying on the evidence available to them at the time of the review. Id. at 469, f.n. 5.

Dr. Cowett utterly failed to fulfill his burden and the facts of this case point toward the correctness of the court rulings in this case. When the information about potential issues with his competence came to the attention of the Chair of the Department of Pediatrics, the review - and the due process provided to Dr. Cowett - commenced and was comprehensive. Witnesses, including Dr. Cowett on multiple occasions, were interviewed, with Dr. Cowett admitting to several mistakes. A board-certified neonatologist examined the babies' charts and found indication that there was cause to further investigate Dr. Cowett. A comprehensive written report was prepared, and Corrective Action under the Bylaws was commenced. At that stage, the case was again reviewed

by twelve physicians, who voted unanimously to recommend revocation of Dr. Cowett's privileges. A hearing was held, at which time Dr. Cowett was provided with copious documentation and significant opportunities to present his case and defend himself against the allegations, all while represented by counsel. The three-physician panel unanimously decided via written opinion that Dr. Cowett had failed to provide appropriate care and recommended that the decision to revoke his privileges be affirmed. The case was reviewed again, with fourteen physicians unanimously affirming the Hearing Panel's decision. Dr. Cowett was afforded another appeal to the Board of Trustees, which in turn voted to accept the recommendation of revocation of Dr. Cowett's privileges.

In total, then, more than twenty (20) separate physicians – as well as other professionals – reviewed the issues presented and weighed the evidence of Dr. Cowett's competence. It is that peer review process and the immunity provided by HCQIA with respect to it which Dr. Cowett cannot avoid and which doomed his claims.

Although Dr. Cowett continues to attempt to pin an improper motive on WRCS by raising unfounded assumptions and wild conspiracy theories, such a motive is irrelevant. Indeed, HCQIA is based on the premise that a reviewing party's motive is irrelevant. See, e.g., Bender v. Suburban Hosp., 134 Md. App. 7 (2000). In Bender, the court stated:

> Under the HCQIA, the reviewing body must meet a standard of objective reasonableness, based upon the totality of the circumstances, ... and not on a subjective standard of good faith. ... The objective reasonableness standard is thus satisfied 'if the reviewers, with the information available to them at

> the time of the professional review action, would reasonably have concluded that their actions would restrict incompetent behavior or would protect patients.' As long as [the hospital's] peer review bodies had enough information to justify the denial of her reappointment, it is irrelevant to this case whether [the hospital's] peer reviewers personally disliked [the doctor], sought to retaliate against her for criticizing the quality of care that other providers had given her patients, reneged on a not-yet-executed settlement agreement, or even seemed to hold her to a higher standard of comportment than some of her male colleagues.

Bender, 134 Md. App. at 28-31.

Dr. Cowett has consistently misstated the concept of motive in HCQIA cases. In the present case, WRCS has not relied on a bare assertion or claim to support the peer review action at issue. Rather, the peer review action is fully supported by the voluminous evidence of the underlying peer review record, including:

- Record of the departmental investigation at WRCS;
- Review of the review and recommendation of WRCS's PEC;
- Record of the notice to Plaintiff of the contemplated action and of his due process rights;
- Transcript of the peer review hearing conducted by a hearing panel over the course of two days at which twelve witnesses testified and hundreds of pages of evidence were submitted by the parties;
- The decision and recommendation of the hearing panel;
- Report of the reconsideration of the PEC;

- Report of the Board's Appellate Review Committee; and
- Record of the final review and action by the WRCS Board of Trustees.

The HCQIA standard and presumption described above would be turned on its head if it is used to force a professional review board to prove that it was objective. Such a requirement of proof would impose a good faith element. Congress chose to use an objective standard to guard against the type of subjective conspiracy theories raised by Dr. Cowett. And while Dr. Cowett and others understandably complain that HCQIA is too harsh a standard that occasionally may give rise to unfair results, that is the value choice that Congress made in promulgating it (and that the Ohio General Assembly made in passing Ohio Revised Code § 2305.25, et seq.

Substantial evidence exists that supports WRCS' actions in this instance and points to the failure of Dr. Cowett to rebut the HCQIA presumption, a failure which all courts that have examined this case have affirmed. In a mere two months on the job, Dr. Cowett deleteriously impacted the care of three critically ill infants, directly calling his skill and judgment into question. Dr. Felter, the Chairman of Dr. Cowett's department, reacted as required by the Bylaws by investigating concerns raised by another neonatologist belonging to the same department. On the basis of multiple interviews and analysis of the medical charts involved, Dr. Felter determined that requesting the professional review action for Dr. Cowett would improve quality health care at WRCS and Dr. Felter therefore, initiated the appropriate process required by WRCS's Bylaws. The twelve physician members of the PEC reviewed the medical evidence compiled by Dr. Felter and unanimously determined that evidence

merited recommending the revocation of Dr. Cowett's privileges in order to further quality health care at WRCS. Once this recommendation was made, Dr. Cowett was told the basis for the recommendation and afforded significant opportunity to oppose it. Therefore, Dr. Cowett was provided with a complete evidentiary hearing and several layers of review from both physicians and WRCS's Board of Trustees.

When the objective test is applied, the propriety of the disciplinary action initiated and carried out against Dr. Cowett becomes starkly apparent, although Dr. Cowett has taken great pains to hide the facts of this case from this Court. Simply put, the peer review process with respect to Dr. Cowett was triggered as a result of the substandard care he afforded to three critically ill babies in the SCN. Dr. Cowett's peer, Dr. Yeaney, first brought these issues to the attention of Dr. Felter, who had a duty – to WRCS, to the public, and most notably to the babies and their families – to undertake an investigation of Dr. Cowett's care and actions with respect to those circumstances.

Dr. Cowett presented no evidence that the peer review process was not done in furtherance of health care. It must be remembered in this case that the PEC, which formally began the process, consisted of twelve (12) and, later, fourteen (14) physicians, the hearing panel (which consisted of three (3) other physicians), and the Ad Hoc Appellate Review Committee (which had three (3) other physicians on it), all determined that revocation was appropriate. In each decision, there is no dispute (and, included no evidence otherwise) that Dr. Cowett's competence was the only consideration. When one examines the peer review record – the only appropriate examination to make – there is no evidence of any improper motive. And the evidence of the supposed improper motive